

Commodity Credit Corporation, USDA

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after the end of the contract year in which the counter-cyclical payment was earned.

(2) The second partial advance counter-cyclical payment shall:

(i) Be calculated in accordance with paragraphs (e)(1) through (4) of this section.

(ii) Be an amount determined by the Secretary not to exceed the result of:

(A) 70 percent of the projected counter-cyclical payment, including any revision thereof, for the covered commodity or peanuts, respectively, minus

(B) The amount of payment made under paragraph (f)(1) of this section; and

(iii) Not be made earlier than February 1 after the end of the contract year in which the counter-cyclical payment was earned.

(g) For 2002 contract, the counter-cyclical payment amount to be paid to the historic peanut producer shall be made using the base and yield established for the historic peanut producer, in accordance with subpart G of this part.

(h) For 2007 contracts, an advance counter-cyclical payment shall be paid, at the request of the producer, if the Secretary determines that a counter-cyclical payment for the covered commodity or peanuts will be required in accordance with paragraph (a)(1) of this section. The advance payment shall:

(1) Be calculated in accordance with paragraphs (e)(1) through (e)(4) of this section;

(2) Not exceed 40 percent of the projected counter-cyclical payment for the covered commodity or peanuts, respectively, as determined by the Secretary; and

(3) Be made after the first 6 months of the marketing year of the covered commodity or peanuts, as applicable.

(i) If a producer declines to accept, or is determined to be ineligible for all or any part of the producer's share of the counter-cyclical payment computed for the farm in accordance with the provisions of this section:

(1) The payment or portions thereof shall not become available for any other producer; and

(2) The producer shall refund to CCC any amounts representing payments that exceed the payments determined by CCC to have been earned under the program authorized by this part. Part 1403 of this chapter shall be applicable to all unearned payments.

(i)(A) The payment of any amount due any producer on a farm enrolled in a contract shall be made only after all the producers subject to the contract are determined to be in full compliance with the contract and the requirements in this part.

(B) A producer on a farm enrolled in a contract may receive a payment amount due without regard to the eligibility of other producers on the farm if:

(1) The producer is in full compliance with the contract and the requirements in this part;

(2) The payment of such amount does not adversely affect nor defeat the purpose of the program, as determined by the Deputy Administrator, or designee; and

(3) The payment is approved by the Deputy Administrator, or designee.

(j) The producers on a farm who receive any advance counter-cyclical payment shall refund the portion of such advance payments that exceeds the actual counter-cyclical payment to be made for the covered commodity or peanuts, as applicable.

§ 1412.504 Sharing of contract payments.

(a) Each eligible producer on a farm shall be given the opportunity to annually enroll in a contract and receive direct and counter-cyclical payments determined to be fair and equitable as agreed to by all the producers on the farm and approved by the county committee.

(1) Each producer must provide a copy of their written lease to the county committee and, in the absence of a written lease, must provide to the county committee a complete written description of the terms and conditions of any oral agreement or lease.

(2) A lease will be considered to be a cash lease if the lease provides for only a guaranteed sum certain cash payment, or a fixed quantity of the crop

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(for example, cash, pounds, or bushels per acre).

(3) If a lease contains provisions that require the payment of rent on the basis of the amount of crop produced or the proceeds derived from the crop, or the interest such producer would have had if the crop had been produced, or combination thereof, such agreement shall be considered to be a share lease. The leasing of grazing or haying privileges is not considered cash leasing.

(4) If a lease provides for the greater of a guaranteed amount or share of the crop or crop proceeds, such agreement shall be considered a share lease if the lease provides for both:

(i) A guaranteed amount such as a fixed dollar amount or quantity; and

(ii) A share of the crop proceeds.

(5) If the lease is a cash lease, the landlord is not eligible for direct or counter-cyclical payments.

(b) When contract acreage is leased on a share basis, neither the landlord nor the tenant shall receive 100 percent of the contract payment for the farm.

(c) CCC will approve a contract for enrollment and approve the division of payment when all of the following apply:

(1) The landlords, tenants and sharecroppers sign the contract and agree to the payment shares shown on the contract;

(2) CCC determines that the interests of tenants and sharecroppers are being protected; and

(3) CCC determines that the payment shares shown on the contract do not circumvent the provisions of part 1400 of this chapter.

§ 1412.505 Provisions relating to tenants and sharecroppers.

Neither direct nor counter-cyclical payments shall be made by CCC if:

(a) The landlord or operator has adopted a scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program. If any of such conditions occur or are discovered after payments have been made, all or any such part of the payments as the State committee may determine shall be refunded to CCC; or

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(b) The landlord terminated a lease in violation of state law as determined by a state court.

Subpart F—Contract Violations and Diminution in Payments

SOURCE: 67 FR 64751, Oct. 21, 2002, unless otherwise noted.

§ 1412.601 Contract violations.

(a) Except as provided in paragraph (b) of this section, violations of contract requirements shall result in the termination of the contract. Upon such termination, all producers subject to the contract shall forfeit all rights to receive direct and counter-cyclical payments on the farm for the contract year and shall refund all direct and counter-cyclical payments received, plus interest, as determined in accordance with part 1403 of this chapter.

(b)(1) If there is a violation of § 1412.407 and CCC determines that a violation is not serious enough to warrant termination of the contract under paragraph (a) of this section, direct and counter-cyclical payments may be made to the producers specified on the contract, but in an amount that is reduced by an amount equal to the sum of:

(i) The per-acre market value of the fruits, vegetables, and wild rice, as determined by the State Committee, times the number of acres in violation, plus

(ii) The direct and counter-cyclical payments for each such acre.

(2) Producers must protect land enrolled in DCP from weeds, including noxious weeds, and erosion, including providing sufficient cover if determined necessary by the county committee. The first violation of this provision will result in a reduction in the direct payments for the farm by an amount equal to three times the cost of maintenance of the acreage, but not to exceed 50 percent of the total direct payments for the farm. The second violation of this provision will result in a reduction in the direct payments for the farm by an amount equal to three times the cost of maintenance of the acreage, not to exceed the total direct payments for the farm.